



Attorney Docket No. **FEL O-001/02US**

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of **Richard P. TRACY et al.**

Serial No.: 09/822,868

Examiner: Felix E. Suarez

Confirmation No.: 7199

Art Unit: 2857

Filed: April 2, 2001

For: **SYSTEM, METHOD AND MEDIUM FOR CERTIFYING AND
ACCREDITING REQUIREMENTS COMPLIANCE**

U.S. Patent and Trademark Office
220 20th Street S.
Customer Window, **Mail Stop Issue Fee**
Crystal Plaza Two, Lobby, Room 1B03
Arlington, VA 22202

ISSUE FEE TRANSMITTAL

Transmitted herewith are the following documents:

- ☒ Issue Fee Transmittal (Form PTOL 85) for the above-identified application.

Fees:

- ☒ Issue Fee of \$1,400.00;
☒ Publication Fee of \$300.00;
☒ Information Disclosure Statement Fee of \$180.00; and
☒ Other Fees: \$15.00 for (5) advance copies.

Total fee: \$ 1,895.00

Payment of Fees:

- ☒ Check in the amount of \$1,895.00 for the total fee is attached.
☐ Please charge \$___ to Deposit Account No. 50-1283 for the total fee. This paper is being submitted in duplicate.

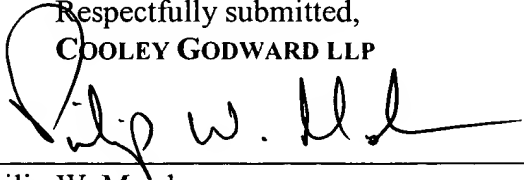
The Director is hereby authorized to charge any appropriate fees under 37 C.F.R. §§1.16, 1.17, and 1.21 that may be required by this paper, and to credit any overpayment, to Deposit Account No. 50-1283.

Dated: January 18, 2005

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Respectfully submitted,
COOLEY GODWARD LLP

By: _____


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Attorney Docket No. **TELO-001/02US**

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COMMENTS ON STATEMENT OF REASONS FOR ALLOWANCE

A statement of reasons for allowance was set forth in the Notice of Allowance mailed October 18, 2004, in connection with the above-identified application. In the Examiner's statement of reasons for allowance, the Examiner has stated that claims 1-86 are allowable because the various cited references fail to teach or suggest specific elements of one or more independent claims.

Applicants respectfully submit, however, that the claims of the above-identified application are allowable for reasons in addition to those stated by the Examiner. For example, the Examiner's reasoning relies on certain features of some independent claims. Applicants respectfully submit that various independent claims of the above-identified application may present additional, independent grounds of patentability not stated by the Examiner. Likewise, Applicants respectfully submit that various dependent claims present additional, independent distinguishing features, not stated by the Examiner.

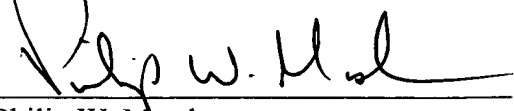
This statement commenting on the reasons for allowance is timely submitted.

Dated: January 18, 2004

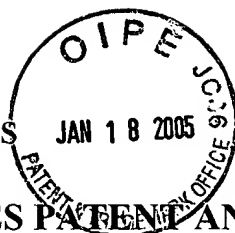
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REQUEST FOR CORRECTION OF PATENT TERM ADJUSTMENT

Applicants respectfully request correction of the patent term adjustment (PTA) for the above-identified application (referred to herein as the "Application"). Because the PTA determined by the U.S. Patent and Trademark Office (PTO) was incorrect due to obvious clerical errors made by the PTO, as detailed below, Applicants respectfully submit that no fee should be required by this paper.

To the extent, however, that it is deemed necessary to treat the instant Request as an Application for Patent Term Adjustment under 37 C.F.R. § 1.705(b), the undersigned has authorized below any necessary fees (*e.g.*, the fee set forth in 37 C.F.R. § 1.18(e)) to be charged to a deposit account.

Furthermore, to the extent that this Request is treated as an Application for Patent Term Adjustment under 37 C.F.R. § 1.705(b), Applicants note that the period of 139 days from the Applicants' response to the first Office Action dated June 26, 2002 until Applicants' subsequently filed Supplemental Information Disclosure Statement (IDS), which was filed on November 12, 2002, can be considered a "failure to engage in reasonable efforts to conclude processing or examination of [the] application," as defined in 37 C.F.R. § 1.704, because that

period exceeded three months by 49 days and the statement required in 37 C.F.R. §1.704(d) did not accompany the Supplemental IDS. Applicants note, however, that Applicants' Supplemental IDS was reasonable and timely in every other sense except for the narrow definition provided in 37 C.F.R. § 1.704. Specifically, the Supplemental IDS was filed less than three months from the October 24, 2002 mailing of the International Search Report (ISR) cited in the Supplemental IDS, by which ISR Applicants were notified of the patent references cited in the ISR that were then cited in the Supplemental IDS.

Statement of Facts

The Application was filed on April 2, 2001. A Notice of Allowance was mailed on October 18, 2004, and was accompanied by a Determination of Patent Term Adjustment under 35 U.S.C. § 154(b), which indicated that a patent issuing from the Application would be entitled to a PTA of 0 days.

On June 5, 2002, 3 days in excess of fourteen months from the filing date of the application, the first notification under 35 U.S.C. § 132 from the PTO (*i.e.*, the first Office Action) was mailed. The PTO's Patent Application Information Retrieval (PAIR) system indicates that any PTA for patent issuing from the above application should be increased by 3 days for this delay by the PTO. A copy of a printout from PAIR System showing the PTA for the Application is attached as Exhibit A. The PAIR System also indicates that the PTA should be increased by an additional period of 81 days and reduced by two periods of alleged delay by Applicants: the first for 43 days and the second for 139 days.

Applicants respectfully submit, however, that the PTO incorrectly calculated the PTA because of at least two obvious clerical errors:

1. The PTO failed to add a 308-day period of delay by the PTO to the PTA because the date of receipt of the Applicants' second Request for Continued Examination (RCE), was incorrectly recorded in the PAIR system; and
2. The PTO incorrectly applied a first period of alleged delay by Applicants of 43 days because the date of receipt of Applicants' response to the Notice to File Missing Parts was incorrectly recorded in the PAIR system.

The PAIR system indicates Applicants' second RCE was filed on December 17, 2003 (*see* Exhibit A). Applicants submit, however, this reply was received by the PTO on August 15, 2003, as evidenced by the stamped postcard receipt from the PTO (attached as Exhibit B).

The PAIR system indicates that a response to the Notice to File Missing Parts was received on September 27, 2001 (*i.e.*, the date the application was indicated as "complete" by the PAIR system) (*see* Exhibit A). Applicants submit, however, that this response was timely filed and received by the PTO on August 15, 2001, as evidenced by the stamped postcard receipt from the PTO (attached as Exhibit C).

Applicants respectfully submit that as a result of the obvious clerical errors noted above, the PTA was incorrectly calculated as 0 days, instead of the correct 253 days.

Correct Calculation of PTA

The PTA for the Application should be increased from 0 days to 253 days under 37 C.F.R. § 1.702(a), because the calculation performed by the PAIR System (1) failed to add a 308-day period of delay by the PTO to the PTA; and (2) incorrectly applied a first period of alleged delay by Applicants of 43 days, subtracting 43 days from the PTA that should not have been subtracted. Accordingly, the correct PTA for the Application should be at least 253 days.

PTA Legal Standard.

The term of a patent will be increased under 37 C.F.R. § 1.702(a) for failure of the PTO to take certain steps within specified time frames. More specifically, 37 C.F.R. § 1.702(a) states in part:

(a) *Failure to take certain actions within specified time frames.*
Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to:

(1) Mail at least one of a notification under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151 ***not later than fourteen months after the date on which the application was filed*** under 35 U.S.C. 111(a) or fulfilled the requirements of 35 U.S.C. 371 in an international application;

(2) Respond to a reply under 35 U.S.C. 132 or to an appeal taken under 35 U.S.C. 134 ***not later than four months after the date on which the reply was filed*** or the appeal was taken[.]

37 C.F.R. § 1.702(a) (emphasis added).

The number of days added to a patent term for failure by the PTO to act on the application within fourteen months of the filing date and respond to a reply within four months is specified in 37 C.F.R. § 1.703(a), which states in part:

(a) The period of adjustment under § 1.702(a) is the sum of the following periods:

(1) The number of days, if any, in the period beginning on the day after the date that is fourteen months after the date on which the application was filed under 35 U.S.C. 111(a) or fulfilled the requirements of 35 U.S.C. 371 and ending on the date of mailing of either an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first; [and]

(2) The number of days, if any, in the period beginning on the day after the date that is four months after the date a reply under § 1.111 was filed and ending on the date of mailing of either an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first[.]

37 C.F.R. § 1.703(a).

Any adjustment of the term of a patent calculated under 37 C.F.R. § 1.703(a) is subject to reduction as specified in 37 C.F.R. § 1.704, which states in parts (a) and (b):

(a) The period of adjustment of the term of a patent under § 1.703(a) through (e) shall be reduced by a period equal to the period of time during which the applicant failed to engage in reasonable efforts to conclude prosecution (processing or examination) of the application.

(b) With respect to the grounds for adjustment set forth in §§ 1.702(a) through (e), ... an applicant shall be deemed to have failed to engage in reasonable efforts to conclude processing or examination of an application for the cumulative total of *any periods of time in excess of three months* that are taken to reply to any notice or action by the Office making any rejection, objection, argument, or other request ...

37 C.F.R. § 1.704(a)-(b) (emphasis added).

37 C.F.R. § 1.704(c) also sets forth a number of circumstances that constitute a failure to engage in reasonable efforts to conclude prosecution, none of which are applicable to the Application.

The PTA of a patent is calculated pursuant to 37 C.F.R. § 1.703(f), which states, in part:

(f) ... The term of a patent entitled to adjustment under § 1.702 and this section shall be adjusted for the sum of the periods calculated under paragraphs (a) through (e) of this section, to the extent that such periods are not overlapping, less the sum of the periods calculated under

§ 1.704. The date indicated on any certificate of mailing or transmission under § 1.8 shall not be taken into account in this calculation.

37 C.F.R. § 1.703(f).

The PTO failed to add a 308-day period of delay by the PTO to the PTA.

The time period from the filing date of the application (April 2, 2001) until the first notification under 35 U.S.C. § 132 (the first Office Action mailed on June 5, 2002) exceeds fourteen months by 3 days, which period appears to have been correctly calculated by the PTO, as mentioned above (*see* Exhibit A). Thus, the PTA of the term of any patent issuing from the Application should be increased by at least 3 days pursuant to 37 C.F.R. § 1.702(a)(1).

Applicants' reply to the first Office Action was filed on June 26, 2002. The PTO's response to Applicants' reply was mailed on January 15, 2003, or 81 days longer than four months from Applicants' reply date, which period appears to have been correctly calculated by the PTO (*see* Exhibit A). Thus, the PTA of the term of any patent issuing from the Application should also be increased by at least 81 days pursuant to 37 C.F.R. § 1.702(a)(2).

Additionally, however, the PTA should be increased pursuant to 37 C.F.R. § 1.702(a)(2) by a period of 308 days, by which the time period for the PTO's response to Applicants' second RCE (*i.e.*, a reply under 35 U.S.C. § 132(b)) exceeded four months. Specifically, Applicants filed a second RCE on August 15, 2003 (*see* Exhibit B), and the date of this reply was incorrectly recorded in the PAIR system as December 17, 2003 (*see* Exhibit A). The PTO's response to Applicants' second RCE was a Notice of Allowance mailed on October 18, 2004 (*see* Exhibit A). For whatever reason, the PAIR system calculated no delay for this period of response (*see* Exhibit A).

The mailing date of the Notice of Allowance (October 18, 2004) exceeds four months from the filing date (August 15, 2003) of Applicants' second RCE by 308 days. Accordingly the PTA of the Application should be increased under 37 C.F.R. § 1.702(a)(2) by 308 days in addition to the periods of 3 days and 81 days calculated correctly by the PAIR system.

The PTO incorrectly applied a first period of alleged delay by Applicants, subtracting 43 days from the PTA that should not have been subtracted.

Pursuant to 37 C.F.R. § 1.704, the period by which the term of any patent issuing from the Application is extended under 37 C.F.R. § 1.702 can be reduced for any failure of Applicants to “engage in reasonable efforts to conclude prosecution” of the application. The PAIR System incorrectly indicates that PTA of the Application should be reduced by 43 days for an alleged delay by Applicants in filing a response to a Notice to File Missing Parts (*see* Exhibit A).

In calculating this alleged delay, the PAIR System indicates that the Notice to File Missing Parts was mailed on August May 15, 2001, and the Application was complete as of September 27, 2001 (*see* Exhibit A). Applicants respectfully submit, however, that the date of receipt of the response to the Notice to File Missing Parts listed in the PAIR System is incorrect, and a response to the Notice to File Missing Parts was timely filed on August 15, 2001, as evidenced by the stamped, return-receipt postcard for that response bearing a Patent Office date stamp of August 15, 2001 (*see* Exhibit C).

The response to the Notice to File Missing Parts was received by the PTO within three months from the mailing of the Notice to File Missing Parts. Accordingly, the PTA should not be reduced under 37 C.F.R. § 1.704, and the 43-day reduction calculated by the PAIR system is incorrect.

Conclusion

Accordingly, the PTA of 0 days calculated by the PTO is incorrect, and should be changed to the correct PTA of 253 days. The correct PTA of 253 days is the total of delays by the PTO under 37 C.F.R. § 1.702(a) (*i.e.*, 3 days + 81 days + 308 days = 392 days) reduced by the total of Applicants’ delays under 37 C.F.R. § 1.704 (*i.e.*, 139 days + 0 days = 139 days), or 392 days - 139 days = 253 days.

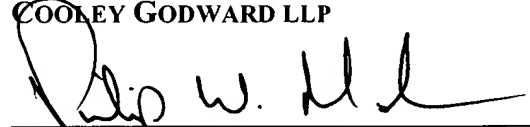
Although no fees are believed necessary by this paper, the Director is hereby authorized to charge any appropriate fees under 37 C.F.R. §§1.16, 1.17, and 1.21 that may be required by this paper, and to credit any overpayment, to Deposit Account No. 50-1283.

Dated: January 18, 2005

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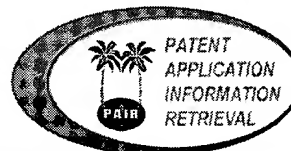
Respectfully submitted,
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By:


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Reg. No. 46,061



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PATENT APPLICATION INFORMATION RETRIEVAL**Patent Term Adjustment (PTA) for publication number: 09/822,868**

			Days
Filing or 371(c) Date:	04-02-2001	USPTO Delay (PTO):	84
Issue Date of Patent:	-	Three Years:	-
Pre-Issue Petitions (days):	+0	Applicant Delay (APPL):	182
Post-Issue Petitions (days):	+0	Total PTA:	0
USPTO Adjustment (days):	+0	Explanation of Calculations	

Search Options

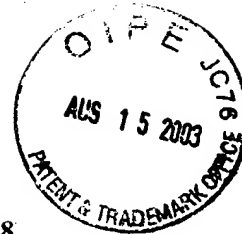
Continuity Data
Image File Wrapper
File History
Published Documents

Patent Term Adjustment History

Date	Contents Description	PTO (days)	APPL (days)
10-18-2004	Mail Notice of Allowance		
10-14-2004	Claims PTO		
10-14-2004	Issue Revision Completed		
10-14-2004	Notice of Allowance Data Verification Completed		
09-22-2004	Reference capture on IDS		
09-22-2004	Information Disclosure Statement (IDS) Filed		
10-14-2004	Notice of Allowability		
12-17-2003	Information Disclosure Statement (IDS) Filed		
10-06-2004	Date Forwarded to Examiner		
12-17-2003	Request for Continued Examination (RCE)		
10-06-2004	Express Abandonment (for Entry of CPA / RCE / Rule129)		
07-19-2004	Workflow - Query Request - Begin		
05-25-2004	Receipt into Pubs		
05-03-2004	Receipt into Pubs		
05-01-2004	Workflow - File Sent to Contractor		
10-15-2003	Reference capture on IDS		
10-15-2003	Information Disclosure Statement (IDS) Filed		
02-24-2004	File Marked Found		
01-23-2004	File Marked Lost		
12-17-2003	Workflow - Request for RCE - Begin		
10-14-2003	Workflow - Customer Service Request - Finish		
10-14-2003	Workflow - Customer Service Request - Begin		
06-13-2003	Receipt into Pubs		
06-11-2003	Dispatch to Publications		

06-06-2003	Mail Notice of Allowance		
06-06-2003	Mail Formal Drawings Required		
06-04-2003	Formal Drawings Required		
06-04-2003	Notice of Allowance Data Verification Completed		
06-04-2003	Notice of Allowability		
05-09-2003	Date Forwarded to Examiner		
04-14-2003	Request for Continued Examination (RCE)		
05-09-2003	Express Abandonment (for Entry of CPA / RCE / Rule129)		
04-14-2003	Information Disclosure Statement (IDS) Filed		
04-14-2003	Workflow - Request for RCE - Finish		
04-14-2003	Workflow - Request for RCE - Begin		
03-24-2003	Receipt into Pubs		
02-13-2003	Workflow - File Sent to Contractor		
02-12-2003	Receipt into Pubs		
02-11-2003	Dispatch to Publications		
01-15-2003	Mail Notice of Allowance	81	
01-14-2003	Notice of Allowance Data Verification Completed	↑	
01-14-2003	Case Docketed to Examiner in GAU	↑	
01-13-2003	Notice of Allowability	↑	
11-12-2002	Information Disclosure Statement (IDS) Filed	↑	139
11-19-2002	Date Forwarded to Examiner	↑	↑
06-26-2002	Response after Ex Parte Quayle Action	↑	↑
06-26-2002	Incoming Letter Pertaining to the Drawings		
06-05-2002	Mail Ex Parte Quayle Action (PTOL - 326)	3	
06-03-2002	Ex Parte Quayle Action	↑	
04-02-2002	Case Docketed to Examiner in GAU	↑	
10-03-2001	Information Disclosure Statement (IDS) Filed	↑	
08-15-2001	New or Additional Drawing Filed	↑	
01-21-2002	Transfer Inquiry to GAU	↑	
10-05-2001	Application Dispatched from OIPE	↑	
09-27-2001	Application Is Now Complete	↑	43
05-15-2001	Notice Mailed--Application Incomplete--Filing Date Assigned	↑	↑
05-09-2001	Correspondence Address Change	↑	
04-14-2001	IFW Scan & PACR Auto Security Review	↑	
04-02-2001	Initial Exam Team nn	↑	

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Applicant(s): **Richard P. TRACY et al.** Application: **09/822,868**
Filing Date: **April 2, 2001** Atty Docket No.: **102632.121US1 SMA/GSD/lrm**
Entitled: **System, Method and Medium for Certifying and Accrediting Requirements Compliance**

RECEIPT IS ACKNOWLEDGED FOR THE FOLLOWING:

- [X] Request for Continued Examination (RCE) Transmittal
- [X] Information Disclosure Statement and PTO-1449 Form
- [X] 4 References
- [X] Authorization to charge Deposit Account No. 08-0219 for \$750.00

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Applicant(s): **Richard P. TRACY et al.** Application: **09/822,868**
Filing Date: **April 2, 2001** Atty Docket No.: **102632.121US1 SMA:lrr**
Entitled: **System, Method and Medium for Certifying and Accrediting Requirements Compliance**

RECEIPT IS ACKNOWLEDGED FOR THE FOLLOWING:

- [X] Response to Notice to File Missing Parts of Nonprovisional Application
- [X] Declaration and Power of Attorney
- [X] Petition for Extension of Time (1 month)
- [X] Assignment and Recordation Form Cover Sheet
- [X] 46 Sheets of Formal Drawings and Drawings Transmittal Letter
- [X] Copy of Notice to File Missing Parts of Nonprovisional Application
- [X] Authorization to Charge Deposit Account No. 08-0219 for \$2658.00

